Arbor Construction Personnel, Inc. *and* Local 9, International Union of Bricklayers and Allied Craftworkers, AFL–CIO, Petitioner and Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO, Intervenor. Case 7–RC–22440

September 30, 2004

DECISION ON REVIEW AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On May 9, 2003, the Acting Regional Director for Region 7 issued a Decision and Direction of Election in which he found appropriate the petitioned-for single-employer unit of plasterers. Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Intervenor filed a timely request for review of the Acting Regional Director's Decision and Direction of Election in which it argued the only appropriate unit is a multiemployer unit consisting of all plasterers employed by members of Architectural Contractors Trade Association (ACT). On June 19, 2003, the Board granted the Intervenor's request for review. The Intervenor filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

After careful consideration of the entire record, including the Intervenor's brief on review, we find, contrary to the Acting Regional Director, that the petitioned-for unit is inappropriate because ACT and the Intervenor created and maintained a multiemployer bargaining unit.[1]

The Employer is a member of two multiemployer associations. First, the Employer is a member of the Washtenaw Contractors Association (WCA) and has been in a collective-bargaining relationship with the Petitioner, through WCA, since 1985. WCA was party to a then-current 8(f) agreement with the Petitioner effective from August 1, 2000, through July 31, 2003.[2]

Second, the Employer is a member of ACT[3] and has been in a collective-bargaining relationship with the Intervenor, through ACT, since 1985. In 1995, the Employer signed a power of attorney delegating authority to ACT's predecessor, Detroit Association of Wall & Ceiling Contractors, to negotiate and sign collective-bargaining agreements and to handle all matters pertaining to labor relations, including handling and settling all labor controversies, disputes, and interpretations of collective-bargaining agreements.[4] ACT and the Intervenor were parties to an 8(f) agreement effective from June 1, 1997, through May 31, 1999. In 2000, ACT and the Intervenor entered into a successor agreement, effective from August 1, 2000, through May 31, 2003 (2000 Agreement), and changed their relationship from one governed by Section 8(f) to one governed by Section 9(a).[5] In November 2000, ACT and the Intervenor amended the 2000 Agreement and expanded its geographic scope to include areas covered by the WCA 8(f) agreement. The 2000 Agreement referred to ACT members collectively as the "Employer" and contained the following recognition language:

> The Employer hereby recognizes Local 67 as the sole Collective Bargaining Agent for all journeymen and apprentice plasterers in the employment of the Employer with respect to wages, hours and other terms and conditions of employment on any and all work described in this agreement whenever possible.
>
> Each Employer, in response to the Union's claim that it represents a majority of each Employer's employees acknowledges and agrees that there is no good faith doubt that the Union has been authorized to, and in fact does, represent such majority of employees.
>
> The Employer agrees to recognize, in such case, the Plasterers & Cement Masons Local 67 as the majority representative of its Employees pursuant to Section 9(a) of the Labor Management Relations Act. They are now or hereafter the sole and exclusive collective bargaining representatives for the employees in the bargaining unit with respect to wages, hours of work and all other terms and conditions of employment.

The Acting Regional Director found that the above-quoted recognition language evidenced an intent to create single-employer bargaining units. Finding no evidence to rebut the presumption of a single-employer unit, the Acting Regional Director found the petitioned-for unit appropriate. We disagree.

A multiemployer bargaining unit is appropriate where "the employers involved have evidenced a clear intent to participate in multiemployer bargaining and to be bound by the actions of the bargaining agent." *Hunts Point Recycling Corp.,* 301 NLRB 751, 752 (1991). Where an employer is part of a multiemployer bargaining relation-

[1] See also *Architectural Contractors Trade Assn.,* 343 NLRB No. 39 (2004), which we have issued today involving the same unions and an analogous issue.

[2] This 8(f) agreement covered plastering work in certain areas of Michigan, including all of Washtenaw County and eight townships in Livingston County.

[3] ACT is a multiemployer association consisting of approximately 50 contractors employing over 2000 employees in different skilled trades.

[4] The Employer has never revoked this power of attorney.

[5] No party disputes that Sec. 9(a) governs the relationship between the Intervenor and ACT.

ship governed by Section 9(a), a petition for a single-employer unit will not be entertained. See *Casale Industries,* 311 NLRB 951, 952 (1993). However, to overcome the single-employer presumption and find a multiemployer bargaining unit appropriate, the Board requires more than the mere adoption of an areawide contract, which includes a "one unit" clause. See *Schaetzel Trucking Co.,* 250 NLRB 321, 323 (1980); *Gordon Electric Co.,* 123 NLRB 862, 863 (1959). Instead, the Board requires evidence of an unequivocal intent to be bound by group action manifested by either participation in the group bargaining or delegation of authority to another to engage in such bargaining. See *Schaetzel Trucking,* 250 NLRB at 323.

Here, both the 1995 power of attorney and the 2000 Agreement evidence an unequivocal intent by the Employer to be bound by group action over at least the past 9 years.[6] The Employer explicitly delegated to ACT the authority to engage in bargaining and to sign collective-bargaining agreements. Further, the Employer's president testified that he had personally sat on the ACT bargaining committee in past years. The express delegation of authority to ACT and the Employer's participation in group negotiations provides sufficient evidence to overcome the single-employer presumption. That the 2000 Agreement provides for recognition under Section 9(a) only after majority status at each member employer is shown is not inconsistent with a multiemployer bargaining unit. See *Painters (Northern California Drywall Contractors Assn.),* 326 NLRB 1074, 1079 (1998), quoting *James Luterbach Construction Co.,* 315 NLRB 976, 979 (1994). ("Each of the employers has a Section 9 bargaining relationship with the union, and the multiemployer group (consisting of those employers) has a Section 9 relationship with the union.")

In sum, we find that the petitioned-for single-employer unit is not appropriate in light of the existence of a controlling history of multiemployer bargaining. Accordingly, we remand this case to the Regional Director for further action consistent with this Decision.

ORDER

The Acting Regional Director's Decision and Direction of Election is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Order.

[6] The Petitioner does not contest that it and the Employer are also signatory to a multiemployer agreement.